



STATE OF INDIANA
ALCOHOL AND TOBACCO COMMISSION

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Delynn & Holly, Inc.)
d/b/a Idle Zone Restaurant and Bar)
608 Buckeye St.) Permit #RR40-22719
North Vernon, IN 47265)

PROPOSED FINDINGS OF FACT
AND CONCLUSIONS OF LAW

I.
BACKGROUND OF THE CASE

Delynn & Holly, Inc. d/b/a Idle Zone Restaurant & Bar, 608 Buckeye St., North Vernon, Indiana 47265 ("Permittee") is the holder of an Alcohol and Tobacco Commission permit type 210, permit #RR40-22719. The Permittee is charged with the following violations occurring on October 28, 2009:

Furnishing alcohol beverage to minor, Indiana Code 7.1-5-7-8

Allowing a minor to loiter. Indiana Code 7.1-5-7-10 (b)

The hearing on the merits was conducted before Hearing Judge E. Edward Dunsmore on July 1, 2010. The Alcohol and Tobacco Commission ("Commission") was represented by the Prosecutor, Jennifer D. Drewry. The Permittee appeared pro se by Delynn Wilson, owner. Witnesses were sworn, evidence was heard, the parties presented final arguments and the matter was taken under advisement. Hearing Judge E. Edward Dunsmore, having reviewed the tape-recorded transcript of the hearing, the evidence submitted to the Commission at the hearing and the contents of the entire file, now tenders his Proposed Findings of Fact and Conclusions of Law for recommendation to members of the Commission.

II.
EVIDENCE SUBMITTED BEFORE THE COMMISSION

The following exhibits were introduced by the Prosecutor against the Permittee in this cause:

1. The contents of the entire Commission file ("ATC file").
2. Indiana State Excise Police Citation Report regarding an incident occurring on October 28, 2009, at Idle Zone Restaurant and Bar, North Vernon, IN.
3. Copy of Indiana State Excise Police Report of Permit Visit and Evaluation issued to Delynn & Holly, Inc. d/b/a Idle Zone Restaurant & Bar, for Furnishing Alcoholic Beverages to a Minor in violation of IC 7.1-5-7-8 and Allowing a Minor to Loiter in violation of IC 7.1-5-7-10(b), regarding an incident occurring on October 28, 2009, at the Idle Zone Restaurant & Bar in North Vernon, IN.
4. One copy of a photograph of a youth known as Minor John IU#429, DOB 6/6/89.

The following exhibits were introduced by the Permittee on behalf of the Permittee in this cause:

None

The following individuals testified on behalf of the Prosecutor against the Permittee in this cause:

1. Indiana Excise Police Officer Christopher Strouse
2. A youth known as Minor John IU #429, DOB 6/6/1989

The following individuals testified on behalf of the Permittee in this cause:

1. Delynne Wilson, owner

III. FINDINGS OF FACT

1. The Permittee, Delynne & Holly, Inc., d/b/a Idle Zone Restaurant & Bar, 608 Buckeye St., North Vernon, Indiana 47265, is the holder of a type 210 permit, permit #DL40-22719. (ATC file).
2. Delynne & Holly, Inc. is the owner of Idle Zone Restaurant & Bar. (Permit Violation Hearing, ATC file).
3. The Permittee, by and through Delynne Wilson, admitted that employee/ server Briana Schroeder sold alcoholic beverages to a minor identified as John IU # 429, without asking for his age, date of birth or checking his identification to determine his age, and that said sale occurred on October 28, 2009. (Permit Violation Hearing).
4. On Wednesday, October 28, 2009, at approximately 12:55 p.m., Indiana Excise Police Officer Christopher Strouse was conducting random, unannounced inspections at locations where alcoholic beverages are sold or distributed, pursuant to IC 7.1-5-7-16 and IC 7.1-5-7-17. These inspections are commonly known as Survey of Alcohol Compliance (“SAC”) checks. (Permit Violation Hearing; ATC file).
5. Officer Strouse and a minor, known as John IU # 429, DOB 6/6/1989 (“John”), conducted a SAC check at Idle Zone Restaurant & Bar in North Vernon, Indiana. (Permit Violation Hearing; ATC file).
6. On October 28, 2009, at approximately 12:55 p.m., John and Officer Strouse (in plain clothes) entered Idle Zone Restaurant & Bar in unidentified capacities. (ATC file; Permit Violation Hearing).
7. While inside Idle Zone Restaurant & Bar, Officer Strouse and John entered the permittee premises, walked up to the bar and sat down. One of two female employee/servers approached them and asked for drink orders. John ordered a 12 oz. Bud Light bottle. John paid the female server \$2.50 for the beer. (ATC file; Permit Violation Hearing).
8. Officer Strouse and John left the permittee premises shortly thereafter. At no time while inside the permit premises was John asked his age, date of birth, or for identification. (Permit Violation Hearing; ATC file).
9. Officer Strouse, once outside the permittee location, prepared a Notice of Violation and re-entered the permit location and identified himself verbally and by show of identification to employee/server Schroeder and Delynne Wilson, owner. Officer Strouse then completed a Notice of Violation and explained the violations to Schroeder and Wilson. Owner Wilson signed and received a copy of the Notice of Violation charges of: 1. Furnishing alcoholic beverage to a minor, Indiana Code 7.1-5-7-8 and 2. Allowing a minor to loiter, Indiana Code 7.1-5-7-10(b). (Permit Violation Hearing; ATC file).

IV.
CONCLUSIONS OF LAW

1. The Commission has jurisdiction over these proceedings and over this permittee. Indiana Code 7.1-3-19-1; Indiana Code 7.1-3-23-2
2. The definition of a permittee includes an agent, a servant, or other person acting on behalf of a permittee, whenever a permittee is prohibited from doing an act under this title. Indiana Code 7.1-1-3-30(b)
3. Briana Schroeder (employee/server) was an agent or other persons acting on behalf of a permittee, namely, Delynne & Holly, Inc., d/b/a Idle Zone Restaurant & Bar. Indiana Code 7.1-1-3-30(b)
4. A minor means a person less than 21 years of age. Indiana Code 7.1-1-3-25
5. It is unlawful for a permittee to recklessly permit a minor to be in the prohibited place beyond a reasonable time in which an ordinary, prudent person can check identification, or confirm the age of a patron. Indiana Code 7.1-5-7-10(b)
6. A prohibited place includes a tavern, a bar, or other public place where alcoholic beverages are sold, bartered, exchanged, and given away, provided or furnished. Indiana Code 7.1-5-7-10(a)
7. It is unlawful for a permittee to allow a minor on his permit premises, except as provided in Indiana Code 7.1-5-7-11 and Indiana Code 7.1-5-7-13 --- 905 IAC 1-15.2-1(b); Indiana Code 7.1-2-3-7
8. It is unlawful for a person to recklessly, knowingly or intentionally sell, barter, exchange, provide or furnish an alcoholic beverage to a minor. Indiana Code 7.1-5-7-8
9. Defenses to furnishing alcohol are provided in Indiana Code 7.1-5-7-5.1.
10. The burden of proof rests upon the permittee (seller) to establish the defense provided in Indiana Code 7.1-5-7-5.1; *Mulread v. State*, 7 N.E. 884 (Ind. 1886); *Fehn v. The State*, 29 N.E. 1137 (Ind.App.1892).
11. The permittee, Delynne & Holly., d/b/a Idle Zone Restaurant & Bar, by virtue of its relationship with Briana Schroeder (employee/server) is guilty of the violations of recklessly furnishing alcoholic beverage(s) to a minor and allowing a minor to loiter. Indiana Code 7.1-5-7-8 and Indiana Code 7.1-5-7-10(b)
12. The weight of the evidence and burden of proof do not sustain any of the defenses to unlawfully furnishing alcohol to a minor and allowing a minor to loiter as provided for in IC 7.1-5-7-5.1.
13. The permittee, Delynne & Holly, Inc., d/b/a Idle Zone Restaurant & Bar, is guilty of recklessly furnishing alcoholic beverage(s) to a minor pursuant to Indiana Code 7.1-5-7-8 and allowing a minor to loiter pursuant to Indiana Code 7.1-5-7-10 (b).

WHEREFORE, the Hearing Judge determines from the presentation and review of the evidence that the Prosecution HAS PROVEN that the Delynne & Holly, Inc., d/b/a Idle Zone Restaurant & Bar, has violated the following statutes:

Recklessly furnishing alcoholic beverage(s) to minor(s), in violation of Indiana Code 7.1-5-7-8; and

Allowing a minor to loiter in violation of Indiana Code 7.1-5-7-10 (b).

WHEREFORE, the Hearing Judge recommends the following disposition to the Commission:

Fine in the amount of five hundred (\$500.00)

Dated: _____

E. Edward Dunsmore Hearing Judge
Alcohol and Tobacco Commission